

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.08.2005

CORAM:

THE HON'BLE MR.JUSTICE P.SATHASIVAM

and

THE HON'BLE MR.JUSTICE AR.RAMALINGAM

W.P.Nos.25232 & 25233 of 2002
WPMP.Nos.34632,34633/02
and 10508, 10509 of 2005

1. The Asst. Commissioner
Kendriya Vidyalaya Sangathan
IIT Campus, Chennai 600 036.

2. The Commissioner
Kendriya Vidyalaya Sangathan
New Delhi 110 016.

...Petitioners in both Wps.

vs.

1. S. Mohammed Ghouse

2. The Registrar
Central Administrative Tribunal
Chennai.

...Respondents in both Wps.

Petitions filed under Article 226 of the Constitution of India
praying for an issuance of a writ of certiorari as stated therein.

For petitioners : Mr. M. Vaidyanathan
in both Wps.,

For respondents : Mr. Vijay Shankar for R.1
in both Wps.,

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COMMON ORDER
(ORDER of the Court was made by P.SATHASIVAM,J.)

Aggrieved by the order of the Central Administrative Tribunal dated 07.06.2000 made in T.A.Nos.24 and 25 of 1999, Kendriya Vidyalaya Sangathan has filed the above writ petitions.

2. Since the issues raised in both the writ petitions are related to S. Mohammed Ghouse, first respondent herein, they are being disposed of by the following common order.

3. The brief facts are as follows:

The first respondent during his tenure as Principal at Kendriya Vidyalaya No.II, Tambaram, applied for extraordinary leave for a period of 2 years in his letter dated 03.09.1985 to avail of medical treatment at Sharjah for his son who has been suffering from cerebral palsy. His request was considered and leave was sanctioned granted by the first petitioner through his proceedings dated 18.11.1985, subject to the condition that he should not seek any teaching or gainful employment during his stay at Sharjah and was relieved of his duty from 28.11.1985.

(a) The first respondent having completed 25 years of service in Kendriya Vidyalaya Sangathan, sought voluntary retirement in his letter dated 06.01.1992 under Rule 56(K) of the Fundamental Rules and 48-A of the Central Civil Service (Pension) Rules, giving 3 months notice. According to the first petitioner, the said letter was received by him on 09.01.1992 and a copy of the same was forwarded vide letter dated 14.01.1992 to the second petitioner herein, who received it on 27.01.1992. The second petitioner sought certain information in his letters dated 05.02.1992 and 14.02.1992, which include vigilance clearance certificate. After verification of the records, it was found that certain complaints were pending against the first respondent, hence, his request for voluntary retirement was rejected by the second petitioner through telegram dated 06.04.1992, as 05.04.1992 was a Sunday. The refusal was also communicated to the Director, JIPMER, and Chairman, VMC by telex dated 07.04.1992 by the first petitioner.

(b) According to the petitioners, as the request of the first respondent for voluntary retirement was rejected within the time, as disciplinary proceedings initiated on 04.01.1993 under Rule 14 of CCS (CCA) Rules, 1965 were pending against him. Questioning the same, the first respondent herein has filed two writ petitions, one for declaration, declaring that he having retired with effect from forenoon of 06.04.1992 in pursuance of the voluntary retirement notice dated 06.01.1992 and another to quash the charge memo dated 04.01.1993. Both the writ petitions have been transferred to the Central Administrative Tribunal and re-numbered as TA.Nos.24 and 25 of 1999. By separate order dated 07.06.2000, the Tribunal quashed the first charge memo and permitted the Kendriya Vidyalaya to proceed against the applicant in respect the second

charge issued vide memorandum dated 04.01.1993. In another order, the Tribunal, after finding that the applicant had ceased to be in service with effect from 06.04.1992, since three months period came to an end on 05.04.1992, allowed his application and directed the Kendriya Vidyalaya Sangathan to declare that the applicant had retired from service with effect from 06.04.1992, after the expiry of three months notice period from 06.01.1992. Questioning the same, as stated earlier, Kendriya Vidyalaya Sangathan has filed the above writ petitions.

4. Heard Mr. M. Vaidyanathan, learned counsel for the petitioners and Mr. Vijay Shankar, learned counsel for first respondent.

5. First, let us consider the question relating to acceptance / rejection of the voluntary retirement offered by the first respondent on 06.01.1992. There is no dispute that the first respondent / Principal in Kendriya Vidyalaya had completed 25 years of service during 1991, when he submitted an application for voluntary retirement on 06.01.1992. Rule 48-A of CCS (CCA) Pension Rules and Rule 56-K of Fundamental Rules enable the first respondent to apply for voluntary retirement for certain reasons. There is no dispute regarding his eligibility to avail voluntary retirement under the above said Rules. By letter dated 06.01.1992, addressed to the second petitioner, the first respondent, after referring the illness of his son since childhood and he is immobile and bed-ridden, sought to proceed on voluntary retirement with effect from 06.04.1992. In the same letter he informed that the said letter may be noted as three months notice for the same from 06.01.1992. In this regard it is relevant to refer the provisions quoted by the first respondent.

"48-A. Retirement on completion of 20 years' qualifying service.

(1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the Appointing Authority, retire from service.

Provided.....

(2) The notice of voluntary retirement given under rub-rule (1) shall require acceptance by the Appointing Authority;

Provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period. "

6. It is the claim of the first respondent that his letter dated 06.01.1992, seeking voluntary retirement had been acknowledged by the second petitioner, the same was either accepted or rejected before the expiry of three months period, viz., 05.04.1992. The Tribunal, after considering the relevant Rules and the factual information that no orders have been passed prior to 05.04.1992 by the Kendriya Vidyalaya, after finding that they accepted the request of the applicant to retire voluntarily with effect from 06.04.1992 and relying on the principles laid down by the Supreme Court, allowed the application and declared that the applicant had retired from service with effect from 06.04.1992, i.e., after the expiry of three months notice period from 06.01.1992. Though Kendriya Vidyalaya has claimed that a telegram had been sent on 06.04.1992, refusing to accept the request for voluntary retirement in view of pendency of some vigilance enquiry and also confirmation letter on 07.04.1992, as rightly argued and concluded by the Tribunal, the fact remains that there is no information / intimation before the cut-off date, viz., 05.04.1992. Though an argument was advanced before the Tribunal as well as before this Court on the side of Kendriya Vidyalaya Sangathan that three months period has to be counted from the date of receipt of the said notice. In the absence of any such specific provision and in view of proviso to sub-rule (2) of Rule 48-A of CCS (Pension) Rules, such inference cannot be drawn and even if we accept the case of the Kendriya Vidyalaya, their intimation is belated and on and from 06.04.1992, the applicant had retired from service.

7. In the case of Union of India vs. Sayed Muzaffar Mir reported in AIR 1995 SC 176, the Hon'ble Supreme Court has held that the retirement comes into effect on completion of notice period. The following conclusion is relevant for our consideration.

"5. The second aspect of the matter is that it has been held by a three Judge Bench of this Court in Dinesh Chandra Sangma vs. State of Assam (1977) 4 SCC 441: (AIR 1978 SC 17), which has dealt with a pari materia provision finding place in Rule 56(c) of the Fundamental Rules, that where the Government servant seeks premature retirement the same does not require any acceptance and comes into effect on the completion of the notice period. This decision was followed by another three Judge Bench in B.J. Shelat vs. State of Gujarat, (1978) 2 SCC 202: (AIR 1978 SC 1109). "

8. In the case of State of Haryana vs. S.K. Singhal reported in 1999 (4) SCC 293, the two Judge Bench, following the earlier decision in Dinesh Chandra Sangma vs. State of Assam (1977) 4 SCC 441: (AIR 1978 SC 17), which is a decision of three Judge Bench of the Supreme Court, has observed,

"13. Thus, from the aforesaid three decisions it is clear that if the right to voluntarily retire is conferred in absolute terms as in *Dinesh Chandra Sangma vs. State of Assam* (1977) 4 SCC 441: (AIUR 1978 SC 17), by the relevant rules and there is no provision in the rules to withhold permission in certain contingencies the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice. If, however, as in *B.J. Shelat* case (1978) 2 SCC 202:1978 SCC (L&S) 208 and as in *Sayed Muzaffar Mir* case AIR 1995 SC 176, the authority concerned is empowered to withhold permission to retire if certain conditions exist, viz., in case the employee is under suspension or in case a departmental enquiry is pending or is contemplated, the mere pendency of the suspension or departmental enquiry or its contemplation does not result in the notice for voluntary retirement not coming into effect on the expiry of the period specified. What is further needed is that the authority concerned must pass a positive order withholding permission to retire and must also communicate the same to the employee as stated in *B.J. Shelat* case (1978) 2 SCC 202:1978 SCC (L&S) 208 and as in *Sayed Muzaffar Mir* case AIR 1995 SC 176, before the expiry of the notice period. Consequently, there is no requirement of an order of acceptance of the notice to be communicated to the employee nor can it be said that non communication of acceptance should be treated as amounting to withholding of permission. "

9. In the case of *Tek Chand vs. Dile Ram* reported in 2001 (3) SCC 290, while considering the very same sub-rule (2) of Rule 48-A of the Central Civil Services (Pension) Rules, 1972, the Supreme Court has held, sub-rule (2) of Rule 48-A requires the appointing authority to accept the notice of voluntary retirement given under sub-rule (1). It is open to the appointing authority to refuse also, on whatever grounds available to it, but such refusal has to be before the expiry of the period specified in the notice. The proviso to sub-rule (2) is clear and certain in its terms. If the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement sought for becomes effective from the date of expiry of the said period. In our case, admittedly, the appointing authority did not refuse to grant the permission for retirement to the employee concerned before expiry of the period of notice.

10. The relevant Rule as well as the above decisions make it clear that the authority concerned must pass a positive order withholding

permission to retire and must also communicate to the person concerned, before the expiry of the notice period. In our case, even according to the Kendriya Vidyalaya Sangathan, telegram was sent, refusing to accept the voluntary retirement on 06.04.1992, i.e., after the expiry of the period mentioned in the notice. All these material aspects have been correctly considered by the Tribunal and accepting the claim of the applicant, allowed his application. We are in entire agreement with such conclusion.

11. Coming to quashing of one charge memo and permitting the Department to proceed the other one, it is to be noted that the first charge relating to the incident that had taken place during the year 1985-86, viz., more than four years before the date of voluntary retirement of the applicant, i.e., 06.04.1992 and therefore, the same was barred in terms of Rule 9 (2) of the CCS (Pension) Rules. Regarding the second charge, the Tribunal has permitted the Department to proceed with the same and conclude the proceedings expeditiously. It is brought to our notice that though the order of the Tribunal in both the above matters was passed as early as on 07.06.2000, the fact remains that no steps were taken by the Department either within the time limit allowed or challenging it before this Court immediately.

12. It is the claim of the first respondent that he was sending enormous representations to the Department to release the terminal benefits payable to him. Only after more than 2 years, the Kendriya Vidyalaya Sangathan has filed W.P.Nos.25232 and 25233 of 2002, challenging the orders of the Tribunal. It is not in dispute that this Court has admitted both the writ petitions and not granted any interim orders so far. It is also the grievance of the first respondent that though he deemed to have been retired with effect from 06.04.1992, none of the terminal benefits have been paid to him, except G.P.F. and provisional pension. It is also his grievance that he has not been given gratuity, leave encashments and commutation of pension. He is now aged about 72 years and it is more than 13 years, since he retired. It is his further grievance that, his son who was suffering from cerebral palsy and his ailing wife died during these years leaving him alone to defend for himself.

13. It is also brought to our notice that five years after the order of the Tribunal and three years after the admission of these two writ petitions, notice for enquiry into charges framed against him was given in respect of certain allegations made in the charge memo dated 04.01.1993. Though the Tribunal has passed an order in June, 2000, permitting the Kendriya Vidyalaya Sangathan to proceed with the second charge, the fact remains, for the last five years no steps have been taken to hold an enquiry as directed by the Tribunal. It is explained that the alleged incident relate to 1989 and 1990 and it is inhuman on the part of

the Kendriya Vidyalaya to proceed against him after more than 16 years. Further, as rightly pointed out that the charge itself is flimsy and relates to an appointment of one Group "D" employee, when he was working as a Principal of Kendriya Vidyalaya Sangathan, Pondicherry. It is also his claim that appointment had been made by a Committee, of which he is a Member and the same was made after police verification, later, it turned out that the selection candidate was an impostor and on coming to know of it, he was asked to resign. In such a circumstance, as rightly pointed out, in view of length of time, we are satisfied that conducting enquiry with regard to the said incident at this juncture is improper and if the charge is now held to be proceeded and enquiry held, it will put to irreparable loss and hardship.

Under these circumstances, we do not find any merit in these writ petitions; accordingly, the same are dismissed. No costs. Consequently, connected WPMs., are also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

The Registrar
Central Administrative Tribunal
Chennai 104.

W.P.Nos.25232 & 25233/2002
Dated:11.08.2005

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gp/18.8.

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